IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 189.

MARY ELLA HARRIS, *Petitioner*,

v.

SADIE BEATRICE HARRIS, *Respondent*.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Mary Ella Harris, petitions for a rehearing on her petition for a Writ of Certiorari to review the judgment below dismissing her appeal.

The grounds upon which Petitioner relies are confined to intervening circumstances of substantial or controlling effect or to other substantial grounds available to Petitioner although not previously presented as follows:

"UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

ERNEST W. HUGGS, SR., APPELLANT,

v.

SHIRLEY HUGGS, APPELLEE.

DIVORCE; FOREIGN DECREE; LACHES; MAINTENANCE OF CHILDREN

1. Appellee held not estopped by laches from contesting a Nevada decree of divorce where it appeared that although three years elapsed after the divorce decree before it was attacked by appellee, neither appellant nor any third person had been affected by the delay.

2. Judgment of the trial court affirmed in a case in which it declared null and void a Nevada divorce decree and required appellant to pay appellee $60.00 a month for the support of minor children where it appeared that although appellant was in Nevada for the statutory period required to evidence domicile in that state, he had not intended to make Nevada his home but intended to return to the District of Columbia at the conclusion of the divorce suit.

No. 11,058. Decided February 28, 1952.

Before CLARK, PROCTOR, and FAHY, Circuit Judges.

APPEAL from the United States District Court for the District of Columbia. Affirmed.

GEORGE E. C. HAYES, with whom JAMES A. COBB and JULIAN DUGAS were on the brief, for the appellant.

ANDREW W. CARROLL for the appellee.

FAHY, Circuit Judge: This is an appeal from a judgment of the District Court of the United States for the District of Columbia which declared null and void a Nevada divorce decree obtained in 1946 by appellant

Ernest W. Huggs, Sr., purportedly dissolving the bonds of matrimony entered into by him and appellee Shirley Huggs in 1931. The judgment below also awards to appellee custody of two minor children of the marriage, with right of reasonable visits by appellant, and requires him to pay appellee $60 per month for the support of the children. The court denied appellee's request for an allowance for her own maintenance without prejudice to further application upon change of circumstances.

Appellant deserted his family, in Washington, in February, 1946, and began living in an apartment with a woman and her fourteen year old son. The Nevada divorce was granted October 19, 1946, and on that day appellant went through a marriage ceremony in Reno with this woman. They then went to California for a few days, returned to Nevada, and spent about ten days there, after which they came back to the District of Columbia. Appellee did not participate in the Nevada action, nor was she personally served within that state.[1]

Appellant contends that (1) appellee was estopped by laches from contesting the validity of the Nevada decree and (2) said decree is valid. On each of these issues the court below decided otherwise.

On the question of laches the court found that, notwithstanding approximately three years elapsed after the divorce decree before appellee's attack upon it, neither appellant nor any third person had been affected by the delay. The marriage ceremony which immediately followed the divorce decree was in no sense due to delay on the part of appellee in contesting that decree. No children have been born of the relationship which accompanied that ceremony. As the trial court found:

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[1] The divorce complaint was filed at Reno September 14, 1946, alleging actual and bona fide residence "for more than six weeks last past." Appellant mailed to his wife, the appellee, a paper for execution providing for her appearance and waiver of service of process but she refused to sign; thereafter in September, 1946, she was personally served in the District of Columbia with the Nevada suit by a United States Marshal for the District of Columbia.

> 'While she [appellee] delayed resorting to the Court until she had need for financial support, nevertheless, since her delay has not injured defendant and has not injured any third party, it is the opinion of the Court that plaintiff's equities outweigh those of defendant.'

We are not warranted in disturbing this conclusion of the court resting upon the facts of the particular case, Harris v. Harris, — U. S. App. D. C. —, — F. (2d) —, 80 Wash. Law. Rep. —, decided February 28, 1952. This is so notwithstanding the contention, rejected by the court below, that considerations of public policy, such as the possibility of children, weigh in favor of sustaining a plea of laches in this general type of case.

After ruling that appellee was not barred by laches, the court held the Nevada decree invalid upon finding that appellant, though he was in Nevada for the statutory period required to evidence domicile in that state, had not intended to make Nevada his home but had intended to return to the District of Columbia at the conclusion of the divorce suit. Again, as with respect to the ruling against estoppel by laches, we are not warranted in upsetting the conclusion that appellant did not acquire a Nevada domicile. See Rice v. Rice, 336 U. S. 674 (1949). Among the supporting facts are the circumstances under which appellant went to Nevada. He first obtained leave from his Government position in the District of Columbia for 136 hours beginning, "July 30, at 8:45 A.M. To end August 21 at 5:15 P.M." and an additional "Number of hours 240 to begin 8/22/46 8:45 A.M. To end 9/20/46 5:15 P.M." A further request for leave was made September 12, 1946, with the statement of appellant "I find it necessary to request an extension of leave without pay up to and including November 1, 1946. This extension has become necessary in view of the fact that the business which originally made it necessary to take leave has not been completed. I feel sure that this extension will be sufficient." The business referred to was to go to Nevada, stay there the statutory period, obtain a divorce, and, eventuated, to remarry the same day, followed by the return to Washington to live.

Finding no error,[2] the judgment is affirmed."

ORILLE C. GAUDETTE.
STANLEY E. OTTO.
Counsel for Petitioner.

[2] It is suggested by the appellant that the court's denial pendente lite of appellee's motion for maintenance on her own behalf, by reason of laches, became the law of the case; but this was prior to final hearing when the evidence was more fully developed. Consequently, the question of laches remained open for reconsideration and decision.

Certificate of Counsel.

We hereby certify that the petition of Mary Ella Harris, for a Rehearing on her petition for a Writ of Certiorari to review the judgment below dismissing her appeal is presented in good faith and not for delay and that the petition is restricted to the grounds above specified.

ORILLE C. GAUDETTE,
STANLEY E. OTTO,
Counsel for Petitioner.

Certificate of Service.

We hereby certify that a copy of the foregoing Petition was served upon Harry L. Ryan, Jr., counsel for Respondent by mailing a copy of same postage prepaid to his office address, 815 15th Street N. W., Washington 5, D. C.

ORILLE C. GAUDETTE,
STANLEY E. OTTO,
Counsel for Petitioner.